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IN THE UNITED STATES DISTRICT COURT OF OREGON

EUGENE DIVISION

THE ESTATE OF DEZERAY MOLIERI, by
and through its Personal Representative,
DIANNA DAVIS

Plaintiff,

v.

Case No. 6:15-cv-02336-TC

**DEFENDANT MARION
COUNTY'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT**

MARION COUNTY, a municipal organization
and **JOHN DOES 1-10**.

JURY TRIAL REQUESTED

Defendants.

Defendant Marion County (“Defendant”), for itself alone, in answer to Plaintiff’s Amended Complaint, admits, denies, and alleges as follows:

1.

Defendant denies the allegations contained in Paragraphs 1, 2, 4, 17, 21, 23, 25, 26, 28, 29, 31, 32 and the “Prayer” of Plaintiff’s Amended Complaint.

2.

In response to Paragraphs 3, 7, and 14, Defendant does not have sufficient knowledge or

information to admit or deny the allegations contained in Paragraph 3, 7, and 14, and, on this basis, denies at this time.

3.

In response to Paragraph 5, Defendant admits that this Court has jurisdiction over this action but deny the remaining allegations in Paragraph 5.

4.

In response to Paragraph 6, Defendant admits that venue is appropriate in this matter but deny the remaining allegations in Paragraph 6.

5.

In response to Paragraph 8, Defendant admits that it is a duly organized municipal entity operating under the laws of the State of Oregon. Deny that the Marion County Jail is a separate legal entity subject to suit.

6.

Paragraphs 9 – 12 refer to other defendants and, as such, no response is due from Defendant. To the extent a claim is asserted against Defendant in Paragraphs 9 – 12, Defendant denies.

7.

In response to Paragraph 13, plaintiff improperly pleads conclusions of law to which no response is due from Defendant.

8.

In response to Paragraph 15, Defendant admits that Judge Deborah Wilson ordered that plaintiff be taken into custody after finding that she was unable to aid and assist pursuant to ORS 161.370.

9.

Defendant admits Paragraphs 16, 18, and 22.

10.

In response to Paragraph 19, Defendant admits that plaintiff was found deceased in her cell at the date and approximate time provided in Paragraph 19.

11.

In response to Paragraph 20, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 19.

12.

In response to Paragraph 24, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 24.

13.

In response to Paragraph 27, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 26.

14.

In response to Paragraph 30, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 29.

15.

In response to Paragraph 33, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 32.

16.

Defendant denies all claims asserted against it in Paragraphs 34 – 41, 43 – 45, 47, 49 – 50, and 52 – 54. As to claims against other Defendants in Paragraphs 34 – 41, 43 – 45, 47, 49 –

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50 and 52 – 54, no responses are due from this Defendant.

17.

In response to Paragraph 42, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 41.

18.

In response to Paragraph 46, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 45.

19.

In response to Paragraph 48, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 47.

20.

In response to Paragraph 51, Defendant realleges and admits and denies as alleged above in response to Paragraphs 1 through 50.

21.

Except as specifically admitted, Defendant denies each and every allegation in the Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

22.

Plaintiff has failed to state a claim for which relief may be granted for one or more of the theories alleged.

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SECOND AFFIRMATIVE DEFENSE

(Legitimate Penological Interests)

23.

The actions of Defendant's employees were reasonably related to legitimate penological concerns regarding the safety and security of the inmates and staff of the Marion County Jail.

THIRD AFFIRMATIVE DEFENSE

(Oregon Tort Claims Act)

24.

Defendant Marion County is a public body.

25.

Plaintiff's state claims are subject to the conditions, limitations and immunities contained in the Oregon Tort Claims Act, ORS 30.260 et seq.

WHEREFORE, Defendant, having fully answered plaintiff's Amended Complaint, prays that said Amended Complaint be dismissed with prejudice and that Defendant be awarded costs and disbursements in defending this action.

DEFENDANTS RESPECTFULLY DEMAND A JURY TRIAL

DATED this 15th day of December, 2017.

/s/Kenneth S. Montoya

Kenneth S. Montoya
Sr. Assistant Legal Counsel
Attorney for Defendant Marion
County

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **ANSWER** on the following person(s):

Matthew L. Mohill
Attorney at Law
P.O. Box 2294
Bend, OR 97709

By the following indicated method or methods:

- XX By electronic means through the Court's Case Management/Electronic Case File system on the date set forth below;
- By faxing a copy thereof to each attorney at each attorney's last-known facsimile number on the date set forth below;
- By mailing a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney's last-known office address listed above and causing it to be deposited in the U.S. mail at Salem, Oregon on the date set forth below;
- By causing a copy thereof to be hand-delivered to said attorney at each attorney's last-known office address listed above on the date set forth below;

DATED this 15th day of December, 2017.

/s/Kenneth S. Montoya

Kenneth S. Montoya
Sr. Assistant Legal Counsel
Attorney for Defendant Marion
County